

Appendix A

*In the United States District Court for the
Northern District of California*

Case No. C-70 1754(RHS)

Paul J. Trafficante, et al.,

Plaintiffs,

and

Committee of Parkmerced Residents Com-
mitted to Open Occupancy, et al.,

Plaintiffs in Intervention,

v.

Metropolitan Life Insurance Company,
et al.,

Defendants.

MEMORANDUM OPINION AND ORDER DISMISSING COMPLAINT AND COMPLAINT IN INTERVENTION

Plaintiffs, residents of the Parkmerced complex of apartments and town houses in San Francisco, brought this action under 42 U.S.C. § 1982 and the fair housing provisions of Title VIII of the Civil Rights Act of 1968, 42 U.S.C., Chapter 45, alleging that defendant Metropolitan, the then owner and operator of Parkmerced, was engaging in discriminatory housing practices in violation of the Act, making Parkmerced what plaintiffs have repeatedly referred to in this litigation as a "white ghetto" and depriving plaintiffs of their alleged right to live in a racially integrated community. A complaint in intervention was filed by community organizations and civic-minded individuals reiterating substantially the same claims. During the course of the litigation Metropolitan sold substantially all its interests in Parkmerced to Parkmerced Corporation, which now operates it and was joined as a defendant.

The threshold question, of course, is whether the plaintiffs have standing to maintain this action. They do not allege, nor can they, that they themselves have been denied any of the rights guaranteed by Title VIII or by 42 U.S.C. § 1982 to purchase or rent real property. Rather, they assert that the denial of such rights to others not parties to this action violates the policies of the Act and has resulted in denying them the benefits of living in the type of integrated community which Congress hoped to achieve by enacting Title VIII.

The Court, after full review of the voluminous memoranda submitted, has concluded that plaintiffs and plaintiffs in intervention have no such generalized standing as they assert to enforce the policies of the Act. More specifically, they are not "persons aggrieved" under § 810 of the Act, 42 U.S.C. § 3610(a), and therefore may not maintain this suit under § 812, 42 U.S.C. § 3612, or under 42 U.S.C. § 1982. The enforcement of the public interest in fair housing enunciated in Title VIII of the Act and the creation of integrated communities to the extent envisioned by Congress are entrusted to the Attorney General by § 814, 42 U.S.C. § 3613, and not to private litigants such as those before the Court.

In reaching this conclusion the Court is not unmindful of the "private attorneys general" cases heavily relied upon by plaintiffs, including, quite recently, *Data Processing Service v. Camp*, 397 U.S. 150 (1970). Each of such cases, however, was brought under the Administrative Procedure Act or otherwise involved action by a government agency and not the activities of private individuals such as are involved here. These cases are extensively reviewed and distinguished in *Sierra Club v. Hickel*, 433 F. 2d 24 (9th Cir. 1970).

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The motions to dismiss are granted and the complaint
and complaint in intervention herein are dismissed.

Dated: February 10, 1971

ROBERT H. SCHNACKE
Robert H. Schnacke

United States District Judge

Appendix B***United States Court of Appeals
for the Ninth Circuit*****No. 71-1325****Filed Sep 13 1971****Wm. B. Luck, Clerk****Paul J. Trafficante, et al.,*****Plaintiffs and Appellants,*****vs.****Metropolitan Life Insurance Company, et al.,*****Appellees.***

Before: CHAMBERS and CARTER, Circuit Judges,
and JAMESON, District Judge.

The petition for a rehearing is denied. The suggestion for
a rehearing en banc is rejected.

All active circuit judges of the court have been advised
of the suggestion for a rehearing en banc and none has re-
quested it.

Appendix C

C 1. FAIR HOUSING ACT OF 1968

42 U.S.C. §§ 3601-3619

§ 3601. Declaration of policy

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.

Pub.L. 90-284, Title VIII, § 801, Apr. 11, 1968, 82 Stat. 81.

§ 3602. Definitions

As used in this subchapter—

(a) “Secretary” means the Secretary of Housing and Urban Development.

(b) “Dwelling” means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) “Family” includes a single individual.

(d) “Person” includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

(e) “To rent” includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(f) “Discriminatory housing practice” means an act that is unlawful under section 3604, 3605, or 3606 of this title.

(g) “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any of the territories and possessions of the United States.

Pub.L. 90-284, Title VIII, § 802, Apr. 11, 1968, 82 Stat. 81.

§ 3603. Effective dates of certain prohibitions—Application to certain described dwellings

(a) Subject to the provisions of subsection (b) of this section and section 3607 of this title, the prohibitions against discrimination in the sale or rental of housing set forth in section 3604 of this title shall apply:

(1) Upon enactment of this subchapter, to—

(A) dwellings owned or operated by the Federal Government;

(B) dwellings provided in whole or in part with the aid of loans, advances, grants, or contributions made by the Federal Government, under agreements entered into after November 20, 1962, unless payment due thereon has been made in full prior to April 11, 1968;

(C) dwellings provided in whole or in part by loans insured, guaranteed, or otherwise secured by the credit of the Federal Government, under agreements entered into after November 20, 1962, unless payment thereon has been made in full prior to April 11, 1968: *Provided*, That nothing contained in subparagraphs (B) and (C) of this subsection shall be applicable to dwellings solely by virtue of the fact that they are subject to mortgages held by an FDIC or FSLIC institution; and

(D) dwellings provided by the development or the redevelopment of real property purchased, rented, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under loan or grant contracts entered into after November 20, 1962.

(2) After December 31, 1968, to all dwellings covered by paragraph (1) and to all other dwellings except as exempted by subsection (b) of this section.

Exemptions

(b) Nothing in section 3604 of this title (other than subsection (c)) shall apply to—

(1) any single-family house sold or rented by an owner: *Provided*, That such private individual owner does not own more than three such single-family houses at any one time: *Provided further*, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: *Provided further*, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: *Provided further*, That after December 31, 1969, the sale or rental of any such single-family house shall be excepted from the application of this subchapter only if such house is sold or rented (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and (B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of section 3604(c) of this title; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

(2) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

Same; business of selling or renting dwellings defined

(c) For the purposes of subsection (b) of this section, a person shall be deemed to be in the business of selling or renting dwellings if—

(1) he has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(2) he has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(3) he is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

Pub.L. 90-284, Title VIII, § 803, Apr. 11, 1968, 82 Stat. 82.

§ 3604. Discrimination in the sale or rental of housing

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that

indicates any preferences, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, or national origin.

Pub.L. 90-284, Title VIII, § 804, Apr. 11, 1968, 82 Stat. 83.

§ 3605. Discrimination in the financing of housing

After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: *Provided*, That nothing contained in this section shall impair the scope

or effectiveness of the exception contained in section 3603(b) of this title.

Pub.L. 90-284, Title VIII, § 805, Apr. 11, 1968, 82 Stat. 83.

§ 3606. Discrimination in the provision of brokerage services

After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, or national origin.

Pub.L. 90-284, Title VIII, § 806, Apr. 11, 1968, 82 Stat. 84.

§ 3607. Religious organization or private club exemption

Nothing in this subchapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this subchapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

Pub.L. 90-284, Title VIII, § 807, Apr. 11, 1968, 82 Stat. 84.

3608. Administration—Authority and responsibility

(a) The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

**Delegation of authority; appointment of hearing
examiners; location of conciliation meetings;
administrative review**

(b) The Secretary may delegate any of his functions, duties, and powers to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this subchapter. The persons to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department of Housing and Urban Development in compliance with sections 3105, 3344, 5362, and 7521 of Title 5. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. The Secretary shall by rule prescribe such rights of appeal from the decisions of his hearing examiners to other hearing examiners or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

**Cooperation of Secretary and executive departments and
agencies in administration of housing and urban
development programs and activities to
further fair housing purposes**

(e) All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to fur-

ther the purposes of this subchapter and shall cooperate with the Secretary to further such purposes.

Functions of Secretary

(d) The Secretary of Housing and Urban Development shall—

(1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(2) publish and disseminate reports, recommendations, and information derived from such studies;

(3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices; and

(5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this subchapter.

Pub.L. 90-284, Title VIII, § 808(a), (c)-(e), Apr. 11, 1968, 82 Stat. 84, 85.

§ 3609. Education and conciliation, conferences and consultations; reports

Immediately after April 11, 1968, the Secretary shall commence such educational and conciliatory activities as in his judgment will further the purposes of this subchapter. He shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this subchapter and his suggested means of

implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. He may pay per diem, travel, and transportation expenses for persons attending such conferences as provided in section 5703 of Title 5. He shall consult with State and local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their State or locality, and whether and how State or local enforcement programs might be utilized to combat such discrimination in connection with or in place of, the Secretary's enforcement of this subchapter. The Secretary shall issue reports on such conferences and consultations as he deems appropriate.

Pub.L. 90-284, Title VIII, § 809, Apr. 11, 1968 82 Stat. 85.

§ 3610. Enforcement—Person aggrieved; complaint; copy; investigation; informed proceedings; violations of secrecy; penalties

(a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "person aggrieved") may file a complaint with the Secretary. Complaints shall be in writing and shall contain such information and be in such form as the Secretary requires. Upon receipt of such a complaint the Secretary shall furnish a copy of the same to the person or persons who allegedly committed or are about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c) of this section, the Secretary shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Secretary decides to resolve the

complaint, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned. Any employee of the Secretary who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than one year.

Complaint; limitations; answer; amendments; verification

(b) A complaint under subsection (a) of this section shall be filed within one hundred and eighty days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the Secretary, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answer shall be verified.

Notification of State or local agency of violation of State or local fair housing law; commencement of State or local law enforcement proceedings; certification of circumstances requisite for action by Secretary

(c) Wherever a State or local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter, the Secretary shall notify the appropriate State or local agency of any complaint filed under this subchapter which appears to

constitute a violation of such State or local fair housing law, and the Secretary shall take no further action with respect to such complaint if the appropriate State or local law enforcement official has, within thirty days from the date the alleged offense has been brought to his attention, commenced proceedings in the matter, or having done so, carries forward such proceedings with reasonable promptness. In no event shall the Secretary take further action unless he certifies that in his judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

Commencement of civil actions; State or local remedies available; jurisdiction and venue; findings; injunctions; appropriate affirmative orders

(d) If within thirty days after a complaint is filed with the Secretary or within thirty days after expiration of any period of reference under subsection (c) of this section, the Secretary has been unable to obtain voluntary compliance with this subchapter, the person aggrieved may, within thirty days thereafter, commence a civil action in any appropriate United States district court, against the respondent named in the complaint, to enforce the rights granted or protected by this subchapter, insofar as such rights relate to the subject of the complaint: *Provided*, That no such civil action may be brought in any United States district court if the person aggrieved has a judicial remedy under a State or local fair housing law which provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in this subchapter. Such actions may be brought without regard to the amount in controversy in any United States district court for the district in which the discriminatory housing practice is alleged

to have occurred or be about to occur or in which the respondent resides or transacts business. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may, subject to the provisions of section 3612 of this title, enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.

Burden of proof

(e) In any proceeding brought pursuant to this section, the burden of proof shall be on the complainant.

Trial of action; termination of voluntary compliance efforts

(f) Whenever an action filed by an individual, in either Federal or State court, pursuant to this section or section 3612 of this title, shall come to trial the Secretary shall immediately terminate all efforts to obtain voluntary compliance.

Pub.L. 90-284, Title VIII, § 810, Apr. 11, 1968, 82 Stat. 85.

§ 3611. Evidence—Investigation; access to records, documents, and other evidence; copying; searches and seizures; subpenas for Secretary; interrogatories; administration of oaths

(a) In conducting an investigation the Secretary shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation: *Provided, however,* That the Secretary first complies with the provisions of the Fourth Amendment relating to unreasonable searches

and seizures. The Secretary may issue subpoenas to compel his access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the United States district court for the district in which the investigation is taking place. The Secretary may administer oaths.

Subpoenas for respondent

(b) Upon written application to the Secretary, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the Secretary to the same extent and subject to the same limitations as subpoenas issued by the Secretary himself. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at his request.

Compensation and mileage fees of witnesses

(c) Witnesses summoned by subpoena of the Secretary shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States district courts. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by him.

Revocation or modification of petition for subpoena; good reasons for grant of petition

(d) Within five days after service of a subpoena upon any person, such person may petition the Secretary to revoke or modify the subpoena. The Secretary shall grant the petition if he finds that the subpoena requires appearance or attendance at an unreasonable time or place, that

it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.

Enforcement of subpoena

(e) In case of contumacy or refusal to obey a subpoena, the Secretary or other person at whose request it was issued may petition for its enforcement in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

Violations; penalties

(f) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if in his power to do so, in obedience to the subpoena or lawful order of the Secretary, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. Any person who, with intent thereby to mislead the Secretary, shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document submitted to the Secretary pursuant to his subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true, and correct entries in such reports, accounts, records, or other documents, or shall willfully mutilate, alter, or by any other means falsify any documentary evidence, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

Attorney General to conduct litigation

(g) The Attorney General shall conduct all litigation in which the Secretary participates as a party or as amicus pursuant to this Act.

3612. Enforcement by private persons—Civil action; Federal and State jurisdiction; complaint; limitations; continuance pending conciliation efforts; prior bona fide transactions unaffected by court orders

(a) The rights granted by sections 3603, 3604, 3605, and 3606 of this title may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred: *Provided, however,* That the court shall continue such civil case brought pursuant to this section or section 3610(d) of this title from time to time before bringing it to trial if the court believes that the conciliation efforts of the Secretary or a State or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Secretary or to the local or State agency and which practice forms the basis for the action in court: *And provided, however,* That any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of this Act, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this Act shall not be affected.

Appointment of counsel and commencement of civil actions in Federal or State courts without payment of fees, costs, or security

(b) Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been

brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action upon proper showing without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

**Injunctive relief and damages; limitation;
court costs; attorney fees**

(c) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than \$1,000 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: *Provided*, That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

Pub.L. 90-284, Title VIII, § 812, Apr. 11, 1968, 82 Stat. 88.

§ 3613. Enforcement by the Attorney General; issues of general public importance; civil action; Federal jurisdiction; complaint; preventive relief

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this subchapter, or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance, he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern

or practice or denial of rights, as he deems necessary to insure the full enjoyment of the rights granted by this subchapter.

Pub.L. 90-284, Title VIII, § 813, Apr. 11, 1968, 82 Stat. 88.

§ 3614. Expedition of proceedings

Any court in which a proceeding is instituted under section 3612 or 3613 of this title shall assign the case for hearing at the earliest practicable date and cause the case to be in every way expedited.

Pub.L. 90-284, Title VIII, § 814, Apr. 11, 1968, 82 Stat. 88.

§ 3615. Effect on State laws

Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this subchapter shall be effective, that grants, guarantees, or protects the same rights as are granted by this subchapter; but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid.

Pub.L. 90-284, Title VIII, § 815, Apr. 11, 1968, 82 Stat. 89.

§ 3616. Cooperation with State and local agencies administering fair housing laws; utilization of services and personnel; reimbursement; written agreements; publication in Federal Register

The Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may reimburse such agencies and their employees for services rendered to assist him in carrying out this subchapter. In furtherance

of such cooperative efforts, the Secretary may enter into written agreements with such State or local agencies. All agreements and terminations thereof shall be published in the Federal Register.

Pub.L. 90-284, Title VIII, § 816, Apr. 11, 1968, 82 Stat. 89.

§ 3617. Interference, coercion, or intimidation; enforcement by civil action

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 3603, 3604, 3605, or 3606 of this title. This section may be enforced by appropriate civil action.

Pub.L. 90-284, Title VIII, § 817, Apr. 11, 1968, 82 Stat. 89.

§ 3618. Authorization of appropriations

There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this subchapter.

Pub.L. 90-284, Title VIII, § 818, Apr. 11, 1968, 82 Stat. 89.

§ 3619. Separability of provisions

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, the remainder of the subchapter and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

Pub.L. 90-284, Title VIII, § 819, Apr. 11, 1968, 82 Stat. 89.

C2 CIVIL RIGHTS ACT OF 1866
42 U.S.C. § 1982

1982. Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

R.S. § 1978.

*Appendix**Appendix D*

COMPLAINT FOR VIOLATION OF
FAIR HOUSING LAWS
BURBRIDGE, et al. vs. PARKMERCED
CORPORATION, et al
NORTHERN DISTRICT OF CALIFORNIA
No. C-71-378 [AJZ]

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*In the United States District Court
for the Northern District of California*

No. C-71-378 ([AJZ])

Charles Burbridge, Ernestine Burbridge,
Dolores Ellis, Glordean Brown and
John Hensley, individually and on be-
half of all persons similarly situated,
Plaintiffs,
vs.

Parkmerced Corporation, a California
corporation, and Metropolitan Life In-
surance Company, a New York corpo-
ration,
Defendants.

COMPLAINT FOR VIOLATION OF
FAIR HOUSING LAWS
FIRST CAUSE OF ACTION

1. This First Cause of Action is maintained pursuant to § 812 of the Civil Rights Act of 1968, 42 U.S.C. § 3612, to obtain redress and affirmative relief from discrimination in housing practices against plaintiffs and all other persons

similarly situated on the basis of race, color, and/or national origin.

2. Representative plaintiffs Charles Burbridge, Ernestine Burbridge, Dolores Ellis, Glordean Brown and John Hensley are Negro citizens of the United States, and residents of the Northern District of California.

3. Each of the persons named as a plaintiff herein has applied for or attempted to apply for and been refused an apartment at Parkmerced because of his or her race, color, religion, and/or national origin, and as a result of the discriminatory policies and practices of defendants herein-after described. Plaintiffs Burbridge applied or attempted to apply for an apartment within 180 days of the filing of this Complaint. Plaintiffs Ellis and Brown applied or attempted to apply for an apartment prior to said 180-day period (to wit in or about September, 1969, and August, 1970, respectively) but said applications remained on file and said plaintiffs were ready, willing and able to accept an apartment at Parkmerced within the past 180 days. Plaintiff Hensley applied or attempted to apply for an apartment at Parkmerced in or about April, 1968, and remained ready, willing and able at all times from said date to and including December, 1968, to accept an apartment at Parkmerced but was prevented from obtaining such an apartment by the discriminatory practices hereinafter described, which practices have continued without substantial change to and including the date of filing this Complaint. At the time each plaintiff attempted to make an application for an apartment at Parkmerced he was a bona fide potential applicant for such apartment and was interested in residing at Parkmerced.

4. The plaintiffs named herein are representatives of a class, as defined by Rule 23(a) of the Federal Rules of Civil Procedure, and bring this action on behalf of the

entire class, pursuant to said rule. The class consists of all members of minority racial and ethnic groups, including non-whites and persons of Spanish surname, against whom defendants have discriminated, as hereinafter alleged, and includes members of said groups who have applied for apartments at Parkmerced, who have attempted to apply for such apartments, and who have been discouraged from applying for such apartments. The members of the class are hereinafter referred to as "plaintiff class." The class is so numerous that joinder of all members is impracticable. There are questions of law and fact common to the class. The claims of the representative parties are typical of the claims of the class, and the representatives will fairly and adequately protect the interests of the class. Adjudication of the claims of the representative parties would as a practical matter be dispositive of the interests of other members of the class who are not parties to the adjudication and the defendants herein have acted or refused to act on grounds generally applicable to the class, thereby making declaratory, injunctive or other affirmative relief appropriate to the class as a whole.

5. Defendant Parkmerced Corporation is a California corporation with its principal place of business in the City and County of San Francisco, California, at Parkmerced. Parkmerced Corporation maintains offices and transacts business within the Northern District of California.

6. Defendant Metropolitan Life Insurance Company ("Metropolitan") is a New York corporation with its principal place of business in New York, New York. Metropolitan maintains offices and transacts business, among other places, within the Northern District of California.

7. At all times herein mentioned until December 21, 1970, Metropolitan was the owner of and operated a planned residential community located in San Francisco, California,

known as Parkmerced. The Parkmerced community consists of numerous high-rise apartment buildings and garden-apartment complexes, which were constructed by Metropolitan in the 1940's and the early 1950's. Parkmerced contains approximately 3,500 residential units and provides moderate rental housing for approximately 8,000 people.

8. On or about December 18, and December 21, 1970, defendants Metropolitan and Parkmerced Corporation entered into and consummated various transactions relating to the Parkmerced property including the following:

(a) Metropolitan leased the underlying real property at Parkmerced to Parkmerced Corporation for a thirty-year period, with options to renew said lease for three additional periods of fifteen years each. Said lease provides for rental payable to Metropolitan calculated, under some circumstances, on the basis of revenue from the operations at Parkmerced. No option to purchase said underlying real property was granted to Parkmerced Corporation.

(b) Parkmerced Corporation purchased all of the building improvements and personal property at Parkmerced. Payment therefor is to be made in installments, secured by a deed of trust, a security interest in personal property, and an assignment of rents in favor of Metropolitan.

(c) Metropolitan and Parkmerced Corporation made certain further agreements contemplating concerted future action by them with respect to the operation and ownership of Parkmerced.

9. Since December 21, 1970, Parkmerced Corporation has operated Parkmerced without substantial change in the business operations or policies at said development. All or virtually all of the Parkmerced rental office employees of Metropolitan have been retained by Parkmerced Corporation, and plaintiffs are informed and believe that Park-

merced Corporation presently intends to make no substantial change in the operation or policies of Parkmerced.

10. During the negotiations preceding the transactions described in the paragraph 8 above, the principals, officers, directors, agents, and attorneys of Parkmerced Corporation had knowledge of the allegations of racial discrimination contained hereby by virtue of their familiarity with the case of *Trafficante, et al., v. Metropolitan Life Insurance Company*, (No. C-70-1754 [RHS]) filed in the United States District Court for the Northern District of California on August 18, 1970, and by virtue of correspondence directed to Harry H. Helmsley and Helmsley-Spear, Inc., principals of Parkmerced Corporation.

11. During the past 180 days defendants, and each of them, acting individually and in combination and concert with each other, have systematically discriminated against members of minority racial and ethnic groups, in connection with the offer and rental of dwellings at Parkmerced. As of the date hereof, plaintiffs are informed and believe that members of minority racial and ethnic groups comprise less than 1% of the population of Parkmerced. Said discrimination is continuing as of the date hereof and will continue hereafter unless restrained by this Court, as hereinafter prayed.

12. In particularization of the foregoing, and not in limitation thereof, defendants, and each of them, acting individually and in combination and concert with each other, have discriminated and will continue to discriminate against plaintiffs and all other persons similarly situated in the following ways and manners:

(a) by refusing to rent a dwelling after a prospective tenant has made a bona fide offer, by refusing to negotiate with prospective tenants for the rental of, and by otherwise making unavailable or denying dwellings to prospective

tenants, because of race, color, or national origin of said prospective tenants;

(b) by discriminating against persons in the terms, conditions and privileges of rental of dwellings, and in the provision of services or facilities in connection therewith, because of race, color, or national origin of such persons; and

(c) by representing to persons because of the race, color, or national origin of such persons that dwellings are not available for inspection or rental when such dwellings are in fact so available.

13. In maintaining and furthering their respective practices and policies of discrimination against the named plaintiffs and members of the plaintiff class, defendants, and each of them, acting individually and in combination and concert with each other, have done or caused to be done the following acts, among others:

(a) Defendants have persuaded minority group members who are potential and qualified applicants for rental of dwellings at Parkmerced that they are not welcome at Parkmerced, that applications by them for rental of dwellings at Parkmerced will be denied or never acted upon, and that both residents, management and employees will create a hostile atmosphere for such applicants if admitted as tenants at Parkmerced;

(b) Defendants have discouraged minority-group members who are potential and qualified applicants for the rental of dwellings at Parkmerced from making application by making misrepresentations (through direct statements, omissions, and half-truths) concerning the existence and availability of apartments at Parkmerced, the rental rates, the terms and conditions of rental, the qualifications required of applicants, the waiting list procedures, and the length of time required before apartments will become

available. Defendants have further discouraged minority-group members who are potential and qualified applicants by making rude remarks and insinuations, and by otherwise failing to treat minority-group applicants courteously;

(c) Defendants have failed and refused to permit or accept applications to Parkmerced from minority-group persons while accepting such applications from Caucasians.

(d) Defendants have discriminated against minority-group applicants in the method of processing applications for rental of dwellings at Parkmerced by applying different practices and procedures to minority-group applicants than are applied to Caucasians;

(e) Defendants have manipulated the "waiting list" for dwellings within Parkmerced by giving preference to certain persons and classes of persons, and by delaying action upon the applications of other persons or classes of persons, in such a manner as to discriminate against minority-group applicants;

(f) Defendants have set and maintained standards for acceptance to Parkmerced which effectively discriminate against minority applicants, and have applied such standards in an unequal and discriminatory manner so as to prevent the rental of dwellings by minority groups within Parkmerced;

(g) Defendants have discriminated against minority-group members in the terms and conditions of rental at Parkmerced, and in particular, Parkmerced Corporation has adopted a dual-rent structure whereby new tenants are required to pay substantially higher rental than present tenants whose leases have terminated;

(h) Defendants have systematically attempted to discourage minority applicants from continuing their applications by various means, such as by offering them apart-

ments which are substantially more expensive and less desirable than those actually applied for;

(i) Defendants have adopted policies of giving preferential treatment to certain organizations the members of which are virtually all Caucasian, but have failed and refused to give such preferential treatment to members of similar organizations, many of whose members are of minority groups;

(j) Defendants have adopted policies of giving preferential treatment to certain organizations but have failed to give such preference to minority-group members of such organizations.

(k) Defendants have adopted policies in connection with application for apartments, rentals, and transfers at Parkmerced which are racially neutral on their face, but which have the effect of discriminating against members of minority groups, and which are not justified by any business necessity.

14. Each of the practices, policies and acts above alleged has occurred within 180 days from the date hereof and has also occurred for many years prior thereto.

15. The discriminations against individual plaintiffs and the plaintiff class alleged herein constitute continuing violations, which have occurred throughout the periods when individual plaintiffs were willing and able to rent apartments at Parkmerced on the same terms and conditions as are or were made available to Caucasians. Said violations are occurring as of the date hereof, and will continue to occur unless defendants are restrained by Order of this Court.

16. As a direct and proximate result of the unlawful policies, practices and acts above alleged, plaintiffs and the represented class have been injured in each of the following ways and manners, among others:

(a) by being deprived of the right to reside at Parkmerced and being forced to reside at other locations where they have been compelled to pay greater rent or to accept inferior apartments in less desirable neighborhoods with poorer facilities and services;

(b) by suffering embarrassment, humiliation, and emotional distress.

SECOND CAUSE OF ACTION

17. This Second Cause of Action is maintained under 42 U.S.C. § 1982, which provides:

"All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

18. Plaintiffs hereby incorporate by reference as if set out fully herein paragraphs 2 through 16, inclusive, of their First Cause of Action.

19. By reason of the foregoing acts of discrimination which have occurred and which will continue to occur unless restrained by appropriate Order of this Court, plaintiffs and members of the class have been and will continue to be deprived of their rights to lease property within Parkmerced on terms and conditions co-equal with those offered to and enjoyed by white citizens.

DAMAGES AND EQUITABLE RELIEF

20. Plaintiffs are informed and believe and thereon allege that apartments at Parkmerced have been rented for less than the fair market value for comparable rental units in the City and County of San Francisco. Plaintiffs are further informed and believe and thereon allege that the difference between the rates charged for apartments

at Parkmerced and the prevailing rate for comparable rental units in the City and County of San Francisco is at least \$50 per month.

21. Except for the discriminatory policies, practices and acts of defendants as above alleged, at least 1,000 apartments at Parkmerced would have been rented to plaintiffs and/or members of the class herein at all times relevant under 42 U.S.C. § 3612 and 42 U.S.C. § 1982, and plaintiffs and the represented class have therefore been damaged by being compelled to pay excessive rents.

22. In addition to the foregoing damages which have been incurred by the class of persons represented herein, plaintiffs are informed and believe and thereon allege that defendants have knowingly, willfully, and maliciously deprived plaintiffs and the class of rights provided to them under Title VIII of the 1968 Civil Rights Act and 42 U.S.C. § 1982. This is therefore a proper case for the award of punitive and exemplary damages against defendants, and plaintiffs pray for such damages in the amount of \$1,000 for each plaintiff and class member herein for such other sum as may be deemed proper and just in the circumstances, but not less than \$1,000,000. Said damages should be awarded to plaintiffs and to the class and should be applied in the form of rent subsidies and/or economic incentives for the benefit of members of the class in connection with an appropriate plan of affirmative action as hereinafter prayed.

23. Plaintiffs further pray that this Court enter its Order enjoining and restraining defendants and each of them from discriminating against plaintiffs and/or the class in the offer or rental of dwellings at Parkmerced and requiring said defendants, and each of them, to take all affirmative action which is necessary to correct the effects of prior discrimination.

Wherefore plaintiffs pray judgment as follows:

1. That the Court enter its Order declaring that these proceedings are, and may be maintained as, a class action;
2. That the Court find, adjudge and decree that defendants, and each of them, have discriminated against plaintiffs and members of the class on the basis of their race, religion and/or national origin in connection with the offer or rental of apartments at Parkmerced;
3. That the Court award plaintiffs and members of the class compensatory damages according to their proof at trial and punitive damages as may be just and proper;
4. That the Court order defendants to offer to plaintiffs and other members of the class dwellings on the same terms and conditions as dwellings were offered to white persons at the time of discrimination by defendants against plaintiffs and members of the class;
5. That the Court enjoin defendants from discriminating against plaintiffs and members of the class in connection with the offer or rental of dwellings at Parkmerced and require defendants to take all action necessary to correct the effects of prior discrimination;
6. That plaintiffs be awarded their costs of suit and a reasonable attorneys fee, as provided by law; and
7. For such other and further relief as to this Court may appear proper.

Dated February 25, 1971.

George H. Clyde, Jr.
Stephen V. Bomse
Margaret D. Brown

